

Federal Communications Commission

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(f) *Personnel, medical and other files whose disclosure would constitute a clearly unwarranted invasion of personal privacy*, 5 U.S.C. 552(b)(6). (1) Under Executive Order 10561, 19 FR 5963, September 13, 1954, 3 CFR, 1954-1958 Comp., page 205, the Commission maintains an Official Personnel Folder for each of its employees. Such folders are under the jurisdiction and control, and are a part of the records, of the U.S. Office of Personnel Management. Except as provided in the rules of the Office of Personnel Management (5 CFR 294.701-294.703), such folders will not be made available for public inspection by the Commission. In addition, other records of the Commission containing private, personal or financial information concerning particular employees will be withheld from public inspection.

(2) [Reserved]

(3) Information submitted to the Commission by applicants for commercial radio operator licenses concerning the character and mental or physical health of the applicant is available for inspection only under procedures set forth in § 0.461. Except in this respect, or where other aspects of a similar private nature warrant nondisclosure, commercial radio operator application files are available for inspection.

(g) *Investigatory records compiled for law enforcement purposes, to the extent that production of such records would:*

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source;

(5) Disclose investigative techniques or procedures; or

(6) Endanger the life or physical safety of law enforcement personnel, 5 U.S.C. 552(b)(7).

[32 FR 10573, July 19, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 0.457, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 0.458 Nonpublic information.

Any person regulated by or practicing before the Commission coming

into possession of written nonpublic information (including written material transmitted in electronic form) as described in § 19.735-203(a) of this chapter under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall be obligated to return the information to the Commission's Office of Inspector General pursuant to that section. See 47 CFR 19.735-203.

[65 FR 66185, Nov. 3, 2000]

§ 0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

(a) Any person submitting information or materials to the Commission may submit therewith a request that such information not be made routinely available for public inspection. (If the materials are specifically listed in § 0.457, such a request is unnecessary.) A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply; if this is not feasible, the portion of the materials to which the request applies shall be identified.

(b) Each such request shall contain a statement of the reasons for withholding the materials from inspection (see § 0.457) and of the facts upon which those records are based, including:

(1) Identification of the specific information for which confidential treatment is sought;

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;

(4) Explanation of the degree to which the information concerns a service that is subject to competition;

(5) Explanation of how disclosure of the information could result in substantial competitive harm;

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(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and

(9) Any other information that the party seeking confidentiality treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(c) Casual requests which do not comply with the requirements of paragraphs (a) and (b) of this section will not be considered.

(d)(1) The Commission may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made pursuant to §0.460 or §0.461. The information will be accorded confidential treatment, as provided for in §0.459(g) and §0.461, until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted. If a response in opposition to a confidentiality request is filed, the party requesting confidentiality may file a reply.

(2) Requests which comply with the requirements of paragraphs (a) and (b) of this section will be acted upon by the appropriate Bureau or Office Chief, who is directed to grant the request if it presents by a preponderance of the evidence a case for non-disclosure consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. If the request is granted, the ruling will be placed in the public file in lieu of the materials withheld from public inspection. A copy of the ruling shall be forwarded to the General Counsel.

(e) If the materials are submitted voluntarily (i.e., absent any direction by the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordi-

narily be returned (e.g., an application will be returned if it cannot be considered on a confidential basis). Only in the unusual instance where the public interest so requires will the materials be made available for public inspection. However, no materials submitted with a request for confidentiality will be returned if a request for inspection is filed under §0.461. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection.

(f) If no request for confidentiality is submitted, the Commission assumes no obligation to consider the need for non-disclosure but, in the unusual instance, may determine on its own motion that the materials should be withheld from public inspection. See §0.457(g).

(g) If a request for confidentiality is denied, the person who submitted the request may, within 5 working days, file an application for review by the Commission. If the application for review is denied, the person who submitted the request will be afforded 5 working days in which to seek a judicial stay of the ruling. If these periods expire without action by the person who submitted the request, the materials will be returned to the person who submitted them or will be placed in a public file. Notice of denial and of the time for seeking review or a judicial stay will be given by telephone, with follow-up notice in writing. The first day to be counted in computing the time periods established in this subsection is the day after the date of oral notice. Materials will be accorded confidential treatment, as provided in §0.459(g) and §0.461, until the Commission acts on any timely applications for review of an order denying a request for confidentiality, and until a court acts on any timely motion for stay of such an order denying confidential treatment.

(h) If the request is granted, the status of the materials is the same as that of materials listed in §0.457. Any person wishing to inspect them may submit a request for inspection under §0.461.

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(i) Third party owners of materials submitted to the Commission by another party may participate in the proceeding resolving the confidentiality of the materials.

[40 FR 7313, Feb. 19, 1975, as amended at 49 FR 21719, May 23, 1984; 55 FR 8951, Mar. 9, 1990; 63 FR 44167, Aug. 18, 1998; 64 FR 55163, Oct. 12, 1999]

§0.460 Requests for inspection of records which are routinely available for public inspection.

(a) Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section and to the provisions of §0.466 and paragraph (l) of this section, a person who wants to inspect such records need only appear at the specified location and ask to see the records. Many such records also are available through the Commission's site on the World Wide Web, located at <http://www.fcc.gov>. Commission documents listed in §0.416 are published in the FCC Record, and many such documents or summaries thereof are also published in the FEDERAL REGISTER.

(b) A person who does not want a copy of the records must appear at the specified location during the office hours of the Commission and must inspect the records at that location. (Procedures governing requests for copies are set out in §0.465.) However, arrangements may be made in advance, by telephone or by correspondence, to make the records available for inspection on a particular date, and there are many circumstances in which such advance arrangements will save inconvenience. If the request is for a large number of documents, for example, a delay in collecting them is predictable. Current records may be in use by the staff when the request is made. Older records may have been forwarded to another location for storage.

(c) The records in question must be reasonably described by the person requesting them so as to permit their location by staff personnel. The information needed to locate the records will vary, depending on the records requested. Advice concerning the kind of

information needed to locate particular records will be furnished in advance upon request. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

(d) If it appears that there will be an appreciable delay in locating or producing the records (as where a large number of documents is the subject of a single request or where an extended search for a document appears to be necessary), the request shall be submitted in writing, either in person or by mail.

(e) Written requests shall be captioned "REQUEST FOR INSPECTION OF RECORDS", shall be dated, shall list the telephone number (if any) of the person making the request and for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document. Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay. (see §0.467)

(f) Written requests shall be delivered or mailed directly to the chief of the organizational unit having custody of the records, as listed in §§0.453 and 0.455. If the request is enclosed in an envelope, the envelope shall be marked, "REQUEST FOR INSPECTION OF RECORDS."

(g) When a written request is received by the custodian of the records, it will be date-stamped.

(h) All requests limited to records listed in §§0.453 and 0.455 will be granted, subject to paragraph (k) of this section. Requests for records listed in those sections shall not be combined with requests for other records.

(i) The records will be produced for inspection at the earliest possible time.

(j) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage and additional charges may be imposed for again producing them.

(k) In addition to the other requirements of this section, the following provisions apply to the reports filed